



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF MUNICIPAL AUDIT**

John G. Morgan
Comptroller of the Treasury

**SUITE 1600
JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0271
PHONE (615) 401-7871
FAX (615) 741-1551**

Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

May 17, 2005

Honorable Mayor and Members of the
Board of Commissioners
City of Etowah
723 Ohio Avenue
Etowah, TN 37331-1345

Mayor and Members of the Board:

We have completed our investigative audit of selected records of the Etowah Police Department. Our examination focused on the period July 1, 2003, through July 31, 2004. However, when warranted, this scope was expanded. The audit was limited to an examination the department's property and evidence function.

The examination was in response to a request from the district attorney general's office for the 10th Judicial District. A police dispatcher had apparently gained unauthorized access to the police property room, and the police chief wanted a full accounting of property held as evidence. Police personnel cooperated fully with the investigative audit.

Our investigative audit revealed that the police property and evidence room was not adequately safeguarded. The padlock on the door was held in place by several accessible and removable screws. A former police dispatcher apparently gained access to the room without authority on at least two occasions. The department has subsequently moved all property and evidence to a more secure room.

Our investigative audit identified \$2,974 in cash seized by the Etowah Police Department pursuant to drug arrests during the period November 30, 2002, through July 2, 2004, which could not be accounted for. At least \$894 of that cash had been forfeited to the City of Etowah in 2003 and should have been deposited into a municipal bank account.

Honorable Mayor and Members of the
Board of Commissioners
City of Etowah
May 17, 2005
Page 2

We were also unable to account for other property items, including one seized handgun and \$85 seized from a robbery suspect. In addition, nine items of drug evidence, including tablets of prescription pain pills and tranquilizers, marijuana, and cocaine could not be accounted for. At least eight items of drug evidence were found in bags that had been torn open. We also found several drug or drug paraphernalia items, apparently seized as evidence, that were unpackaged and unlabeled.

On March 14, 2005, former police dispatcher, Shannon Williams, pled guilty to felony charges of burglary other than habitation and tampering with evidence, and misdemeanor charges of theft of less than \$500 and possession of drug paraphernalia.

Several weaknesses in the city's internal controls allowed this to occur without detection. Those weaknesses included:

Confiscated property held as evidence not adequately safeguarded

As noted in the previous section, the door to the police department's evidence room had not been properly secured. Under court decisions interpreting Tennessee Rules of Evidence, Rule 901, a proper chain of custody must be documented and maintained for items to be admissible as exhibits at court proceedings.

Confiscated drugs not properly accounted for, inventoried, or disposed of

The police department maintained custody of drugs and drug paraphernalia seized pursuant to Section 53-11-451, *Tennessee Code Annotated*. However, the department did not follow the procedures set forth in state statutes for the disposal of those items. In our investigative audit, we noted the following problems:

- A complete, updated inventory of evidence was not maintained.
- Applicable seized drugs and drug paraphernalia were not destroyed annually as required by state law.
- Evidence was not adequately labeled.

Section 53-11-451(j), *Tennessee Code Annotated*, states:

Any property of the type set forth in subdivisions (a)(1) and (7) which is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or

exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

- (1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;
- (2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and
- (3) The clerk, or such deputy as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

Confiscated guns not adequately accounted for or disposed of

We noted several confiscated weapons in the police department's property room which were not identified by case number or any other form of identification by which they could be linked to an arrest or incident report. Based on the date of confiscation marked on weapons, several had been held by the police department for over five years.

Section 39-17-1317(b), *Tennessee Code Annotated*, states, "Any weapon declared contraband shall be sold in a public sale, destroyed, or used for legitimate law enforcement purposes, at the discretion of the court, by written order."

Section 39-17-1317(h)(1), *Tennessee Code Annotated*, further states:

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or

Honorable Mayor and Members of the
Board of Commissioners
City of Etowah
May 17, 2005
Page 4

practices regulating the preservation of evidence. Any such weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon. . . . No weapon seized by law enforcement officials shall be used for any personal or law enforcement purposes, sold or destroyed except in accordance with this section.

Other confiscated property not adequately disposed of

We noted numerous items of evidence which had been found or confiscated in cases which had since been disposed of which had been stored in the police department's evidence room.

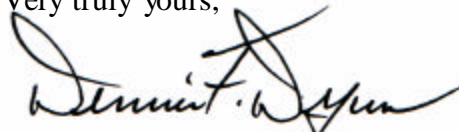
Section 40-38-106, *Tennessee Code Annotated*, states, "Victims of crimes involving offenses against property shall have the right to: (1) Recover property in the custody of the police or the court as soon as reasonably possible."

Section 18-1-206, *Tennessee Code Annotated*, sets forth the required procedures for disposal of evidence other than drugs, firearms, or documents.

Section 18-1-205, *Tennessee Code Annotated*, provides for the periodic disposition of documents as specified in Sections 18-1-202 through 18-1-204.

Town officials should take immediate corrective action to resolve these issues. If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis F. Dycus", written over a horizontal line.

Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

DFD/RAD